

DOCKET FILE COPY ORIGINAL

ORIGINAL
RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20006

OCT 1 1 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Policies and Rules Implementing) CC Docket No. 93-22
the Telephone Disclosure and)
Dispute Resolution Act)

COMMENTS OF
TELE-COMMUNICATIONS ASSOCIATION

Tele-Communications Association ("TCA"), by its attorneys, respectfully submits its comments in response to the Commission's Further Notice of Proposed Rulemaking ("Notice") in the above-captioned proceedings.¹ By that Notice, the Commission seeks comment on whether changes in the rules regarding pay-per-call 800 number information services are required to prevent various fraudulent sales and billing practices. Because many TCA members have been victimized by such practices, TCA commends the Commission for seeking to strengthen these rules.

In 1993, the Commission adopted rules to implement the Telephone Disclosure and Dispute Resolution Act (TDDRA).² Those rules were intended in part to protect consumers from fraudulent and abusive practices by information providers (IPs). To ensure

¹ FCC 93-22 (released August 31, 1994). TCA is an association of telecommunications managers whose members represent nearly 1,000 companies, government agencies, and non-profit institutions. TCA is interested in this proceeding because many of its members have received fraudulent bills for 800 number pay-per-call services. Consequently, TCA has a direct financial interest in, and is eminently qualified to comment on, any changes in these rules.

² 47 U.S.C. § 228.

No. of Copies rec'd
List ABCDE

OH

that consumers are aware of which services are pay-per-call, and which are toll-free, this regulatory scheme generally directed that pay-per-call services be provided on the 900 service access code. It made a narrow exception, however, for presubscribed pay-per-call services, which could be provided on the 800 service access code.³

By carving out this exception, the Commission hoped to promote mutually beneficial business arrangements between IPs and their customers, without subjecting those customers to fraudulent or abusive billing practices. However, as the Commission points out in the instant Notice, certain IPs have abused this 800 pay-per-call exception to the point where further consumer protection is now necessary. TCA concurs with this assessment, because abuses in this area have become rampant.

For example, in some cases, an unauthorized employee calls a 800 pay-per-call service, and the IP reads the Automatic Number Identification (ANI) of the originating telephone. The IP then uses the ANI to immediately issue a personal identification number (PIN) to the unauthorized employee, with no further verification as to whether he or she is legally capable of binding the employer to an information service subscription

³ In its original regulations, the Commission did not require a written presubscription agreement, although it did place the burden on the IP to prove that a presubscription agreement did in fact exist. Further, the original regulations allowed use of a credit card instead of a presubscription arrangement, but did not specify what type of "credit card" was required.

agreement. In other cases, IPs have sent their agents, sometimes posing as telephone repairmen, into the offices of TCA members, where they move from telephone to telephone, calling the IP and "presubscribing" many or all of the lines. In addition, some IPs have issued "credit cards" (which are not accepted by any business other than the issuing IP) over the telephone. The caller can then continue to gain unauthorized access to the IP through the use of this "credit card."

These abuses often are compounded by confusing billing practices. Because the manner of billing is inadequately regulated, common carriers that bill for IPs may not separate the unauthorized calls from legitimate calls. They also may show the IP-related calls as terminating at geographic area codes rather than 800 numbers, or even at directory assistance numbers. Thus, when a business is billed for information services that it never authorized, it is often either unaware that the calls represent pay-per-call 800 numbers, or, if it is aware of the nature of these calls, it is unable to pinpoint the date, time, and terminus of the call.

Against this background, additional safeguards plainly are needed to protect consumers. The most effective alternative would be to mandate that all pay-per-call services be provided over 900 numbers. This approach would have the advantage of reinforcing the public's perception that 800 numbers are toll-free. At the same time, though, TCA understands that some legitimate information service providers wish to use 800 numbers


to access pay-per-call offerings because the per-minute costs of using 900 service are much greater. In addition, Section 228 arguably preserves the opportunity for IPs to use 800 for pay-per-call services under certain circumstances.⁴ Accordingly, while the 900-only approach would be the simplest means of protecting consumers, the Commission apparently is compelled to employ less restrictive alternatives.

In determining what approach to take, TCA urges the Commission to place the greatest emphasis on protecting consumers from deceptive, fraudulent, or unauthorized charges. Its proposals to tighten the credit card exception and common carrier billing practices appear to be steps in the right direction. The Commission should assure, however, that whatever exceptions to the ban on 800 pay-per-call services are adopted do not simply open up new loopholes for unethical service providers.

Respectfully submitted,

TELE-COMMUNICATIONS ASSOCIATION

By:


Michael Senkowski
Jeffrey S. Linder
Stephen J. Rosen
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006

Its Attorneys

Dated: October 11, 1994

⁴ 47 U.S.C. § 228(c)(6)(C).